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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,449	10/17/2003	Bruce P. Konen	1110-0473	1569

7590 11/25/2005

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EXAMINER

SHAKERI, HADI

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,449

Applicant(s)

KONEN, BRUCE P.

Examiner

Hadi Shakeri

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

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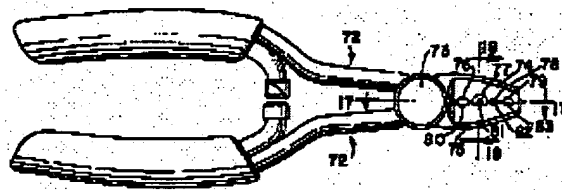
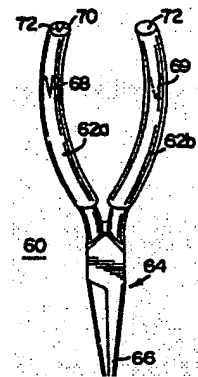
DETAILED ACTION***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-15 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Bond (5,421,224) in view of Ohno (3,675,359).

Bond meets all of the limitations of claims 1, 6 and 11, i.e., a hand tool having two handles (72), each handle having first and second planar surfaces joined by inner and outer surfaces, and indicia (68) (69) located on the inner surface of at least one of said handles and indicating the type of said tool and wherein first and second handle portions pivotably connected to one another, each handle terminating in a tool head portion, wherein said indicia is located on the inner surface of both of said handles, except for disclosing a handle



having convex portions relative to each other and placing the indicia on an inner surface of the convex portions. Pliers with handle grips having convex distal ends are old and known, e.g., as evident by Ohno.

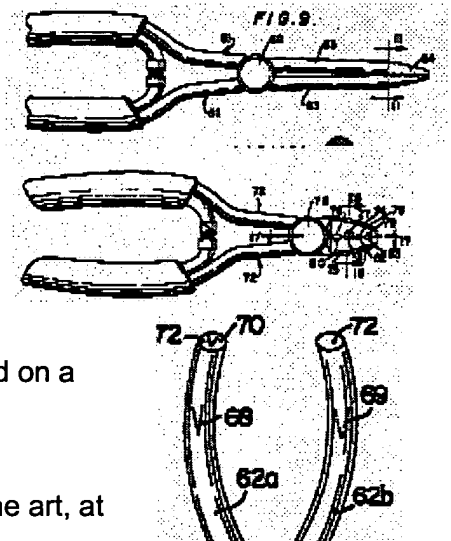
It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of Bond with the ergonomically shaped grips as taught by Ohno for comfort. Note that the disclosure of Bond for placing the indicia at the end of the grip for the ergonomically shaped handle grips would meet the limitations as recited.

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Modified prior art also discloses that the indicia may be integrally formed on the handle or alternatively molded onto and raised from the handle meeting the limitations of claims 3, 9, 10 and 15.

3. Claims 1-15 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Ohno in view of Bond.

Ohno meets all of the limitations of claims 1, 6 and 11, i.e., pliers shaped hand tools having two handles, each handle having first and second planar surfaces joined by inner and outer surfaces, with convex inner surfaces, except for disclosing indicia. Bond teaches placing indicia (70) located on a distal end of the handles indicating the type of the pliers.



It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of Ohno with the indicia as taught by Bond to adapt the tool with marking indicating the type and/or the size of the tool.

Modified prior art also discloses that the indicia may be integrally formed on the handle or alternatively molded onto and raised from the handle meeting the limitations of claims 3, 9, 10 and 15.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Response to Arguments

5. Applicant's arguments filed 09/14/05 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Bond is silent with respect to the comfort of the handle grips, and Ohno teaches pliers type hand tools having resilient cover for comfort, therefore modifying the handle grip of Bond with the grips as shown by Ohno to provide a comfortable handle would be obvious to one of ordinary skill in the art. Ohno on the other hand, is silent regarding identification of different types pliers shown, and Bond teaches placing indicia at an end and/or side of the handle grips, and modifying the tools of Ohno for identification marks as taught by Bond would be obvious to one of ordinary skill in the art.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the

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applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The argument that the combination would not meet the claims, because placing the indicia on the inside of the handle would render it useless, is not persuasive, since Bond is concerned with visibility of the indicia, as evident by teaching of placing it at different locations, and further because by placing the indicia at the end of the handle as shown by Bond for a handle grip as disclosed by Ohno would place it on the inside curved end visible to the user. See Ohno Figs. 1, 2, 6 and/or 8.



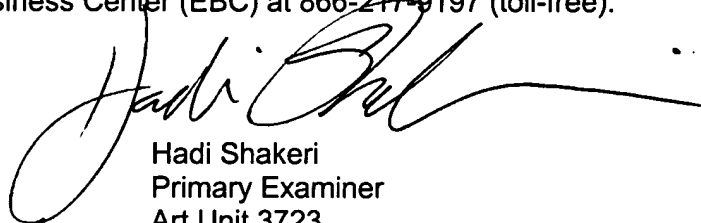
Conclusion

6. Prior art made of record and not relied upon are considered pertinent to applicant's disclosure. Risse, Putsch, and Dolak are cited to show related inventions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hadi Shakeri whose telephone number is (571) 272-4495. The examiner can normally be reached on Monday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hadi Shakeri
Primary Examiner
Art Unit 3723
November 22, 2005